S.B. CIVIL SECOND APPEAL NO.327/2005

Damodar Das vs. Narendra Mal.

Date : 9.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Thanvi, for the appellant.
Mr. Ashok Patel, for the respondent.

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Heard learned counsel for the parties.

The appellant/tenant is aggrieved against the judgment and decree passed by the trial court dated 9.2.2004 by which the trial court decreed the suit of the plaintiff for possession of the property in dispute on the ground of personal bonafide need of the plaintiff/landlord. The defendant/appellant preferred appeal which was dismissed by the first appellate court vide judgment and decree dated 7.6.2005.

In second appeal, the substantial question of law has been projected as whether the suit could have been decreed for the need of sisters and daughters of the landlord under the provisions of Section 13(1)(h) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 ? and whether the court below has misread the evidence ?

After going through the facts of the case, I do not find the questions put to be substantial questions of law in the facts of the case because the two courts below have concurrently found that the need of the plaintiff is

bonafide and this finding of fact cannot be interfered in the appeal under Section 100 CPC as the finding has not been vitiated because of any error of law.

In view of the above, this appeal deserves to be dismissed and is hereby dismissed.

However, learned counsel for the appellant, at this stage, prays that some time may be granted to the appellant to vacate the premises for which learned counsel for the respondent has no objection if shorter time is granted.

Looking to the totality of the facts, it will be just and proper to grant some time to the appellant to vacate the premises upto 30.9.2006.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month that he shall hand over the vacant possession to the landlord by or before 1.10.2006 ; shall not transfer or sublet the premises in question and shall pay all the decreetal amount arrears of rent, if due, within a period of two months from today, the decree under challenge shall not be executed till 1.10.2006. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court. In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

(PRAKASH TATIA), J.

S.Phophaliya